

§ Prob 12A
(Rev. 01/2020 - D/SC)

United States District Court

for

District of South Carolina

Report on Offender Under Supervision

Name of Offender: Marshall M. Cohen

Case Number: 2:20CR00433-001

Name of Sentencing Judicial Officer: The Honorable Mary Little Cooper, Sr. U. S. District Judge

Name of Current Judicial Officer: The Honorable Bruce Howe Hendricks, U.S. District Judge

Date of Original Sentence: February 14, 2017

Date of Revocation: October 19, 2021

Original Offense: Count One: Distribution of Child Pornography, in violation of 18 U.S. C. §§ 2252A(a)(2)(A) and 2252A(b)(1)

Original Sentence: The defendant was committed to the custody of the Bureau of Prisons for 60 months followed by 60 months supervised release.

Revocation Sentence: The defendant was committed to the custody of the Bureau of Prisons for a term of time served followed by Life supervised release.

Type of Supervision: Supervised Release

Date Supervision Commenced: October 19, 2021

Previous Court Action/Notifications: The defendant appeared before the Court on October 19, 2021, for a revocation hearing in which the Court imposed a sentence of time served followed by LIFE supervised release. The defendant's violations included: failure to reform from sexually explicit activities and failure to comply with sex offender treatment.

On January 21, 2022, a Summons was issued for the defendant's failure to refrain from viewing images of adult nudity and sexual activity. On February 8, 2022, the defendant made his Initial Appearance before the Honorable Mary Gordon Baker, U.S. Magistrate Judge. The Court set a \$50,000 unsecured bond with conditions.

On May 20, 2022, the Court was notified that the defendant tested positive for marijuana on May 3, 2022. The results were confirmed positive by Abbott Toxicology Services on May 10, 2022. No action was requested by the Court, the defendant received a written reprimand and tested at an increased frequency for no less than ninety (90) days.

On March 20, 2023, the Fourth Circuit issued a published opinion in *United States v. Cohen*, No. 21-4612, 2023 WL 2564405 (4th Cir. 2023), ruling that a clause in the special condition regarding the type of materials depicting adult pornography and nudity was overbroad and imposed a greater deprivation of liberty than reasonably necessary. Based on the 4th Circuit's ruling in *U.S. v. Cohen*, the defendant's noted conduct of possessing and viewing content identified as adult nudity and sexual activity is no longer admissible as a punishable violation. In accordance with this ruling, on March 24, 2023, Assistant Public Defender Cody Groeber filed a Motion to

Dismiss Supervised Release Violations outlined in a Summons signed by Your Honor on January 21, 2022. Assistant United States Attorney Katherine Orville and the probation office both conceded to the dismissal of violations with no objections.

On May 25, 2023, the defendant appeared for a final revocation hearing to amend his J&C due to the Fourth Circuit ruling and to dismiss the pending violation.

On March 5, 2024, the Court was notified of allegations made against the defendant. The defendant allegedly participated in conversations amongst fellow coworkers about sexual fantasies involving female customers who brought their vehicles to the location for service. Part of these fantasies included pulling their hair. It was also alleged that the defendant physically pulled the hair of two (2) female coworkers. The probation officer scheduled the defendant to undergo a problem driven polygraph with Palmetto Truth Solutions, LLC on February 27, 2024. The polygraph examiner concluded there was "no deception indicated." No action was requested, and the notice served only to advise the Court of the defendant's behavior.

NONCOMPLIANCE SUMMARY

The offender has not complied with the following condition(s) of supervision:

Violation Number

Nature of Noncompliance

- | | |
|----|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1. | <u>Failure to Refrain from Using an Electronic Device Unless Approved by the U.S. Probation Officer:</u> On July 25, 2024, the defendant submitted to a routine polygraph examination. During the pretest interview, the defendant disclosed he uses his wife's cell phone device approximately 10 times per month. When confronted by the U.S. Probation Officer, the defendant admitted to knowing the use of his wife's cell phone was prohibited. He reported his use was for legitimate purposes only (i.e.: work, shopping, car searches). He stated he has not accessed any pornography or chats with his wife's cell phone. The defendant's wife's cell phone is not an internet device approved by the probation office, as it does not have internet monitoring software installed. |
|----|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

U.S. Probation Officer Action: It is respectfully recommended that the violation be held in abeyance. The defendant has been advised that a subsequent revocation hearing may be scheduled as a result of the violation.

On July 31, 2024, contact was made with the defendant by telephone, and he was advised he does not have permission to use his wife's cellphone. The defendant will be issued a written reprimand and the U.S. Probation Officer will meet with the defendant's wife to review the Computer Owner's Agreement to Prohibit Use form she recently signed on June 10, 2024, to ensure there is full understanding. Additionally, the U.S. Probation Officer will review the Judgment and Commitment and the Computer Monitoring Agreement with the defendant. The U.S. Probation Office will continue to monitor this case and notify the Court of any further noncompliance.

Respectfully Submitted,

By: Amberelle N. Wells
Amberelle N. Wells
U.S. Probation Officer
Charleston Office

Date: August 6, 2024

Reviewed and Approved By:

LaSheika S. VanDyke
LaSheika S. VanDyke
Supervising U.S. Probation Officer

-
-
- ☒ Agree with Probation Officer's recommendation
- ☐ Submit a Request for Modifying the Condition or Term of Supervision
- ☐ Submit a Request for Warrant or Summons
- ☐ Other

Bruce H. Hendricks

Bruce Howe Hendricks
U.S. District Judge

August 6, 2024

Date